

A Brief Primer on School Land Grant Practices

Kevin Carter, Director of the Utah School and Institutional Trust Lands Administration

Land grants to fund (endow) educational purposes were common in Europe long before the discovery and settlement of the Western Hemisphere in the middle of the last millennium. As the founders of our nation looked for ways to fund public institutions and goals, they turned to that resource which was had in abundance to meet those needs, namely land.

Having experienced the problems which had arisen from the lack of a uniform survey system in the original 13 colonies and other early states⁽¹⁾, the Continental Congress, established under the Articles of Confederation, enacted the [General Land Ordinance of 1785](#).⁽²⁾ This law provided for a uniform, rectangular survey system and established the pattern of 36-square mile townships (6 miles on each side), located in sequential distances from an identified, central point. This pattern allowed the Congress to award a consistent acreage and land grant throughout the newly created territories and states. The General Land Ordinance is additionally pertinent to this discussion because it also provided for a land grant for the establishment and support of education.⁽³⁾

Two years later, the Continental Congress enacted the [Northwest Ordinance](#). In addition to confirming the importance of education, and the government's obligation to encourage education,⁽⁴⁾ the Ordinance described the process for unsettled lands to become territories, and eventually states. Essentially the path to statehood was to be marked by logical steps. After exploration and settlement a geographic area would be 'organized' by an act of Congress, at which point it would become a United States Territory. After the territory had grown to include over 5,000 adult male settlers, it could elect a legislature and send a delegate to Congress. After the population reached 60,000, the territory could petition the Congress for statehood.⁽⁵⁾ If the petition was favorably received, the Congress would pass an *Enabling Act* which 'enabled' the citizens in the territory to adopt a constitution, send it to Congress for ratification, and, if passed, gain admittance to the Union on an 'Equal Footing' with the existing states.⁽⁶⁾

The Accession to Statehood went through four phases: 1) The original colonial states; 2) The Northwest Territory and Missouri Compromise (1803-1837); 3) Sectoral Division and Territorial Expansion (1845-1864); and 4) The Arid West (1867-1912). Phase 2 states typically received one section per township (section 16). Phase 3 states also received one section until the accession of Oregon in 1859, whereupon the grant was increased to two sections (sections 16 and 36). Phase 4 states continued to receive two sections until the accession of Utah in 1896, when the grant was increased to four sections (sections 2, 16, 32 and 36).⁽⁷⁾

The nature of the grant also went through four stages. In the first stage the lands are regarded as the property of the township in which they are located and the funds derived from them are managed by the respective townships. In the second stage township ownership continues, but the funds are managed for the respective townships by the several counties in which the townships lie. In this stage the township funds are kept separate, and each township receives

an income proportionate to the fund intrusted by it to the county. The third stage is like the second in most respects except that the state, instead of the county, manages the funds for the townships. In the fourth stage, the township lands are declared to belong to the state. The state manages the lands, creates a fund derived from their proceeds, and distributes the income of this fund among the counties, townships, or districts in proportion to their school population.⁽⁸⁾

The determination of how the land and fund would be managed was spelled out in each state's respective Enabling Act. Utah's Enabling Act is clear that the grant is to the State, for the support of the common schools,⁽⁹⁾ and does not reflect the language of the Stage 1, 2 or 3 grants referred to earlier. The Congress was pursuing a consistent evolution of enabling act language as they witnessed the abuses that had occurred to the lands and the funds with the earlier grants. Additionally, experience demonstrated that granting the lands to townships or districts created severe inequities within the state school systems as some school grant sections had significant value, while others were nearly worthless.⁽¹⁰⁾

Summary: The land grant for education in the United States has evolved in two very significant ways as settlement spread westward. First, the grant was increased as the land became increasingly arid and unproductive. Secondly, experience taught that the state was a better steward of the lands and funds and more likely to adhere to the Congressional purpose of the grant.

1. For a description of the title problems encountered by early settlers see Lincoln, Donald, David Herbert, 1996, Touchstone, New York, NY, pg. 24 & 26

2. It is of interest that both the General Land Ordinance of 1785 and the Northwest Ordinance of 1787 predate the Constitution of the United States (1789). Also of interest is that the much-referenced 'equal footing' doctrine is not found in the Constitution and instead has its roots in the Northwest Ordinance.

3. *"There shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township"*

4. *"Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged"*. An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio, Article 3.

5. Utah endured five Enabling Acts before finally gaining admission. New Mexico petitioned 11 times.

6. State Trust Lands: History, Management, & Sustainable Use, Souder, Jon A. and Fairfax, Sally K., 1996, University Press of Kansas, Lawrence, Kansas. Page 18.

7. Ibid. pages 19-23.

8. A History of Public Permanent Common School Funds in the United States, 1795-1905, Swift, Fletcher Harper, 1911, Henry Holt and Company, New York, pages 107-108.

9. Utah Enabling Act, Section 6.

10. Swift 1911